

REMARKS/ARGUMENTS

The preceding amendments and following remarks are submitted in response to the non-final Office Action mailed December 29, 2005, setting a three month shortened statutory response ending March 29, 2006. Claims 1-44 remain pending in this Application. Reconsideration, examination and allowance of all pending claims are respectfully requested.

IDS Consideration

In reviewing the IDS 1449 Forms submitted on 7/9/04, 4/25/05, 4/27/05, 9/23/05 and 9/28/05 and returned with the current Office Action, Applicants notice that the Examiner did not formally consider several of the references provided, stating that no date was provided with the references.

In an Interview on February 7, 2006, the Examiner indicated that a resubmission of the IDS forms with an indication next to each reference stating "prior to December 2, 2003" would be sufficient to establish a date for purposes of considering these references. The IDS forms originally submitted 7/9/04 and 4/25/05 are being resubmitted herewith with the changes as suggested by the Examiner. The Applicants wish to thank the Examiner for his consideration of these references.

Claim Objections

In paragraph 6 of the Office Action, the Examiner objected to claim 43 stating that a period "." is missing at the end of the claim. In response thereto, Applicants has amended claim 43 inserting the period, as indicated by the Examiner.

35 U.S.C. § 112 ¶ 2 Rejections

On page 3 of the Office Action, the Examiner rejected claims 34, 35, and 42 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In particular, the Examiner states that there is insufficient antecedent basis in claims 34-35 for the limitation “the one or more scheduled parameters” contained in lines 1-2 of those claims. In addition, the Examiner further states that there is insufficient antecedent basis in claim 42 for the limitation “the modifying step” contained in line 1 of that claim.

With this Amendment, Applicants have amended claims 34 and 35 by deleting the phrase “one or more” before the first instance of the word “schedule” in each claim. Furthermore, Applicants have amended claim 42 by deleting the phrase “modifying step comprises generating” and inserting the phrase “schedule parameters are”. Applicants assert that these claim amendments overcome the Examiner’s objections to claims 34-35 and 42 under 35 U.S.C. § 112, second paragraph.

35 U.S.C. § 101 Rejections

In paragraph 11 of the Office Action, the Examiner rejected claims 1-15, 24-30, and 37-44 under 35 U.S.C. § 101 as “not being tangible since the elements or features of the claimed Machine can be implemented by software alone”. According to the Examiner, “[t]he language of the claims raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.”

Application Serial No. 10/726,245
Response dated March 29, 2006
Reply to Office Action dated December 29, 2005

Applicants respectfully assert that claims 1-15, 24-30, and 37-44 rejected by the Examiner are directed to statutory subject matter under 35 U.S.C. § 101. The Examiner's statement that these claims are not tangible since the elements or features of the claimed invention can be implemented by software alone appears to contradict the Board of Patent Appeals and Interference's recent decision in *Ex Parte Lundgren*, BPAI No. 2003-2088 (9/28/05), which held that the test for patentable subject matter under § 101 does not include a separate "technological arts" test. In *Ex Parte Lundgren*, the Board was presented with two issues on appeal, one of which addressed whether the "invention as a whole is in the technological arts." In concluding that no such separate test exists, the Board distinguished the decision in *re Musgrave*, 431 F.2d 882, 167 U.S.P.Q. 280 (CCPA 1970) stating that *Musgrave* did not intend to create a separate "technological arts" test encompassing a generalized definition of statutory subject matter.

Thus, based on the decision in *Ex Parte Lundgren*, the proper inquiry under § 101 is not whether the claims fall under a particular technological art, environment or machine, but rather whether such claims are applied in a practical manner to produce a useful result. Based on this standard, it is therefore irrelevant whether or not all of the elements or features of the claims can be performed by software alone. It is also unnecessary whether the claims produce a "physical transformation" or can be performed by the human mind, as this basis for rejection under § 101 was rejected by the Federal Circuit's decision in *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 50 U.S.P.Q.2d (1447) (Fed. Cir. 1999) (holding that the proper inquiry for purposes of analyzing utility in process claims under § 101 is not whether such claims recite a

“physical transformation”, but rather whether such claims are applied in a practical manner to produce a useful result). Therefore, since there is no separate “technological arts test”, and since there is no requirement that a physical transformation be present in the claims, Applicants assert that the Examiner’s rejection of claims 1-15, 24-30, and 37-44 under 35 U.S.C. § 101 is improper.

35 U.S.C. § 102 Rejections

In paragraph 12 of the Office Action, the Examiner rejected claims 1-6, 13-16, 18-20, 22-28, 30-34, 36-41, and 43-44 under 35 U.S.C. § 102(b) as being anticipated by *Otsuka et al.* (U.S. Patent No. 4,819,714). Applicants must respectfully disagree.

Turning first to the rejection of claim 1. Claim 1 now recites:

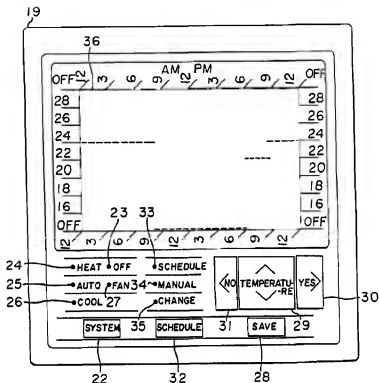
1. (currently amended) A method of programming a schedule of a controller having a user interface, the schedule having a number of schedule parameters, the method comprising the steps of:
providing ~~one~~ two or more interview questions to a user via the user interface, each of the two or more interview questions elicit a numerical time and/or a numerical temperature as a response;
accepting one or more user responses from the user via the user interface, in a non-graphical form, to the ~~one~~ two or more interview questions ~~from the user via the user interface;~~ and
creating and/or modifying one or more of the schedule parameters based on the user responses provided by the user interface.

In *Otsuka et al.*, the controller (14,19) described therein does appear to provide some initial questions related to initial setup parameters of the controller such as the present time, the kinds of apparatuses and devices to be used, and the number of zones to be air-conditioned (see, for example, *Otsuka et al.*, column 7, line 23 through column 8, line 2). With respect to the temperature schedule, however, *Otsuka et al.* does not appear to disclose or suggest many of the

elements of claim 1 including, for example, the steps of providing two or more interview questions to a user via the user interface, each of the two or more interview questions elicit a numerical time and/or a numerical temperature as a response, and accepting one or more user responses from the user via the user interface, in a non-graphical form, to the two or more interview questions. Instead, *Otsuka et al.* state:

The input of the temperature schedule is conducted as follows. The abscissa in the first display means 36 as shown in FIG. 2 is used as a time axis and the ordinate thereof is used as a temperature axis, and the temperature schedule is displayed in a form of graph with linear lines in a dot matrix formed by the LCDs. When the upper part of the temperature key 29 is pushed, the established room temperature increases by 1.degree. C. (1 dot), whereas the lower part of the temperature key 29 is pushed, it decreases by the same value. When the time key 30 or 31 is pushed, the established temperature is shifted by 1 dot on the left side or the right side (or a certain amount of time such as 30 minutes or 1 hour).

(*Otsuka et al.*, column 8, line 47-60). As can be seen, and with respect to the temperature schedule, *Otsuka et al.* does not appear to provide two or more interview questions to a user via the user interface, wherein each of the two or more interview questions elicit a numerical time and/or a numerical temperature as a response, or to accept one or more user responses from the user via the user interface, in a non-graphical form. Rather, *Otsuka et al.* appears to require the user to directly enter temperature setpoints in a graphical form using the selection of yes/no buttons (30,31) and the temperature button (29) on the screen of the main controller (19), as shown in Figure 2, which is reproduced below:



For these and other reasons, claim 1 is believed to be clearly patentable over *Otsuka et al.* For similar and other reasons, dependent claims 2-15 are also believed to be clearly patentable over *Otsuka et al.*

Now turning to claim 16, which recites:

16. (currently amended) A controller comprising:
 a programmable schedule, the schedule having a number of schedule parameters; and
 a user interface, adapted and configured to provide ~~one two~~ or more interview questions to a user, and to accept ~~one or more~~ a numerical value for each of at least two of the two or more interview questions as user responses to ~~the one two or more interview questions from the user, said at least two of the two or more interview questions including at least one interview question relating to a comfort temperature level of the user, and at least one different question relating to a schedule of the user;~~

wherein, ~~the one or more of the~~ schedule parameters are modified based on the user responses ~~provided by the user interface~~.

As noted above, *Otsuka et al.* appears to require the user to directly enter temperature setpoints in a graphical form using the selection of yes/no buttons (30,31) and the temperature button (29) on the screen of the main controller (19), as shown in Figure 2. Thus, *Otsuka et al.* appear to suggest entering the time and temperature parameters for any given set point simultaneously, and corresponds to an x-y position on the graphical interface. In contrast, claim 16 recites a user interface that is adapted and configured to provide two or more interview questions to a user, and to accept a numerical value for each of at least two of the two or more interview questions as user responses, wherein the at least two of the two or more interview questions including at least one interview question relating to a comfort temperature level of the user, and at least one different question relating to a schedule of the user. Nothing in *Otsuka et al.* appears to suggest providing one interview question relating to a comfort temperature level of the use and another interview question relating to a schedule of the user. For these and other reasons, claim 16 is believed to be clearly patentable over *Otsuka et al.* For similar and other reasons, dependent claims 17-22 are also believed to be clearly patentable over *Otsuka et al.* For similar and other reasons, claims 37-44 are also believed to be clearly patentable over *Otsuka et al.*

Turning now to claim 23, which recites:

23. (currently amended) A controller comprising:
schedule means for providing a programmable schedule, the
programmable schedule having a number of schedule parameters; and
user interface means adapted and configured to provide two ~~one~~ or more
interview questions to a user, and to accept one or more user responses to each of
the ~~one~~ two or more interview questions from the user, said two or more interview

questions including at least one interview question eliciting a discrete numerical value from the user relating to the user's comfort level and/or schedule;
wherein, the controller modifies one or more of the schedule parameters based on the user responses provided by the user interface.

As can be seen, claim 23 recites a user interface means adapted and configured to provide two or more interview questions to a user, and to accept one or more user responses to each of the two or more interview questions from the user. Claim 23 further recites that the two or more interview questions include at least one interview question eliciting a discrete numerical value from the user relating to the user's comfort level and/or schedule. As noted above, and with respect to the temperature schedule, *Otsuka et al.* appears to teach having the user to enter data related to the user's comfort level and/or schedule, not as discrete numerical values, but rather in a graphical form (see above). For these and other reasons, claim 23 is believed to be clearly patentable over *Otsuka et al.* For similar and other reasons, claims 24-36 are also believed to be clearly patentable over *Otsuka et al.*

35 U.S.C. § 103 Rejections

In paragraph 13 of the Office Action, the Examiner rejected claims 7-8 under 35 U.S.C. § 103(a) as being unpatentable over *Otsuka et al.* (U.S. Patent No. 4,819,714) in view of *Abrams* (U.S. Patent No. 6,608,560). In paragraph 14 of the Office Action, the Examiner rejected claims 7-12, 21, 29, 35, and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Otsuka et al.* (U.S. Patent No. 4,819,714) in view of *Bennett* (U.S. Patent No. 5,877,957). In paragraph 15 of the Office Action, the Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over *Otsuka et al.* (U.S. Patent No. 4,819,714) in view of *Rosen* (U.S. Patent No. 6,824,069).

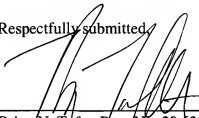
Application Serial No. 10/726,245
Response dated March 29, 2006
Reply to Office Action dated December 29, 2005

For at least the reasons provided above, Applicants respectfully submit that dependent claims 7-12, 17, 21, 29, 35, and 42 are clearly patentable over *Otsuka et al.*, either alone or in combination with *Abrams*, *Bennett*, and/or *Rosen* .

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance, and issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 359-9348.

Application Serial No. 10/726,245
Response dated March 29, 2006
Reply to Office Action dated December 29, 2005

Respectfully submitted,



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INFORMATION DISCLOSURE STATEMENT BY APPLICANT Page 1 of 3	Atty. Docket No.: H0005440-9950 (1161.1142101)	Serial No.: 10/726,245
	Applicant: John B. Amundson et al.	
LIST OF PATENTS AND PUBLICATIONS	Filing Date:	
	December 2, 2003	
		Group Art: unknown

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT Page 2 of 3	Atty. Docket No.: H0005440-9950 (1161.1142101)	Serial No.: 10/726,245
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT Page 3 of 3	Atty. Docket No.: H0005440-9950 (1161.1142101)	Serial No.: 10/726,245
LIST OF PATENTS AND PUBLICATIONS	Applicant: John B. Amundson et al.	
	Filing Date: December 2, 2003	Group Art: unknown

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EXAMINER:	DATE CONSIDERED:

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

FORM PTO-1449

Page 1 of 5

Atty. Docket No.:

H0005440-9950

(1161.1142101)

Serial No.:

10/726,245

LIST OF PATENTS AND PUBLICATIONS FOR
APPLICANT'S INFORMATION
DISCLOSURE STATEMENT

Applicant: John B. Amundson et al.

Filing Date:

December 2, 2003

Group Art:

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FORM PTO-1449

Atty. Docket No.:

H0005440-9950

(1161.1142101)

Serial No.:

10/726,245

**LIST OF PATENTS AND PUBLICATIONS FOR
APPLICANT'S INFORMATION
DISCLOSURE STATEMENT**

Applicant: John B. Amundson et al.

Filing Date:

December 2, 2003

Group Art:

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Page 3 of 5 LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT'S INFORMATION DISCLOSURE STATEMENT	FORM PTO-1449	Atty. Docket No.: H0005440-9950 (1161.1142101)	Serial No.: 10/726,245
	Applicant: John B. Amundson et al.		
	Filing Date: December 2, 2003	Group Art: unknown	

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Page 4 of 5 FORM PTO-1449	Atty. Docket No.: H0005440-9950 (1161.1142101)	Serial No.: 10/726,245
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT'S INFORMATION DISCLOSURE STATEMENT	Applicant: John B. Amundson et al.	
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EXAMINER:	DATE CONSIDERED:

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.